



July 12, 2017

Ron Menor, Chair
Ikaika Anderson, Vice Chair
and Members
City Council, City and County of Honolulu
Honolulu, Hawaii 96813

**Comments and Proposed Amendments Regarding Bill 59, CD1 (2017)
Relating to Affordable Housing Incentives**

**Public Hearing/Second Reading
Regular Meeting of the City Council of the City and County of Honolulu
City Council Chamber, Wednesday, July 12, 2017, at 10:00 a.m.**

The Land Use Research Foundation of Hawaii ("LURF") is a statewide private, non-profit research and trade association whose members include major Hawaii landowners, developers, and a utility company. LURF's mission is to educate and advocate for reasonable, rational and equitable land use planning, legislation, and regulations that encourage well-planned economic growth and development, while safeguarding Hawai'i's significant natural and cultural resources and public health and safety.

LURF members have, and continue to include major landowners and housing developers who have successful experience building affordable housing and market housing for Hawaii residents. Since its formation in 1979, LURF has served on numerous state and county affordable housing advisory committees and task forces and its members have actively collaborated on various affordable housing policies and laws throughout the state. LURF supports efforts to provide more affordable housing and housing for all income levels, and is willing to collaborate with all housing stakeholders and government agencies to create and implement reasonable and rational policies, funding, laws, regulations and incentives that will facilitate more affordable housing and housing at all income levels.

LURF's Position. LURF and its members support the general intent of Bill 59, CD1, however, this measure should be amended to add more incentives and apply the incentives to a broader range of housing projects, to further encourage the building of more affordable and market housing inventory in Honolulu. Thus, LURF provides the following **comments and respectfully recommends that this committee favorably consider the attached amendments** to the current version of Bill 59, CD1 (2017):

LURF Comments

1. **Establish a Working Group and Collaborative Process.** The current versions of Bill 58, CD1 and Bill 59, CD1 did not involve a collaborative process or serious consideration of input from experienced housing developers. LURF respectfully recommends that the Council create a working group which would effectively engage the experienced housing developers, affordable housing advocates, government agencies and other stakeholders in a collaborative process to work on amendments to Bills 58, CD1 and 59, CD1.
2. **The City should commit to provide City lands and necessary infrastructure for affordable housing under Bill 59, CD1.** These were specific commitments in the 2017 State of the City Address. The Administration should “*Walk the Talk*” and include these specific commitments in Bill 59, CD1.
3. **More government restrictions, requirements and inclusionary zoning (IZ) have not worked in Hawaii, and will have the opposite effect.** This measure is supposedly “tied-to” Bill 58, CD1, which imposes IZ requirements and restrictions. As our present housing crisis proves, more government regulation and IZ ordinances like Bill 58, CD1, will not be successful in producing more housing – in fact, such government requirements are part of the cause of the shortage of housing in Hawaii. Historic examples of the failure of IZ requirements include:
 - 1999-2005, the City repealed its own IZ buyer income and resale restrictions.
 - 2006-2014, Maui County’s IZ ordinance resulted in only three affordable units being sold to qualified low-income buyers.

In his testimony before the City Council in 2013, Dr. Carl Bonham, Executive Director of the University of Hawaii Economic Research Organization (UHERO) and Professor of Economics and the University of Hawaii at Manoa, testified as follows:

In 2010, UHERO conducted a comprehensive review of studies that analyzed IZ policies across the United States (See Bonham, Burnett, and Kato, “Inclusionary Zoning: Implications for Oahu’s Housing Market”, February 2010). Approximately 90% of the studies concluded that IZ increases the market price of housing and decreases housing units available in the market. Of the 18 studies that were able to quantify the effect of inclusionary zoning on housing market outcomes, 13 found that IZ policies both increased the market price of housing and decreased housing units available in the market, and three more studies found evidence of at least one of those effects.

UHERO’s report concluded that “Inclusionary Zoning policies have failed in other jurisdictions, and are failing on Oahu.” Such policies have not delivered substantial numbers of affordable housing units to households the programs were designed to help.

The undersupply of housing services relative to household formation on Oahu is a chronic problem. While IZ policies are politically appealing, they mistakenly tax housing to encourage more of it! The effect of a tax on the production of any product, housing included, is relatively straightforward. The extra tax imposed by IZ increases the cost to developers and limits the supply of housing provided. Facing the additional cost, developers will build fewer housing units, all else equal. In the worst case scenario, if the expected loss on the "affordable" units does not allow developers to meet their required rate of return, then projects will never get off the ground. The primary means of insuring the project is viable is to produce more upscale, higher priced homes to offset the loss on the subsidized housing. So, the IZ tax not only reduces the overall supply of housing, it also changes the mix of housing by encouraging higher end and more expensive housing developments.

(emphasis added)

4. **More incentives are needed in Bill 59, CD1, the proposed IZ affordable housing requirements in Bill 58, CD1 (AHR) are "infeasible" for most Oahu housing projects.** According to the Administration, Bill 58, CD1 (IZ requirements and restrictions) and Bill 59, CD1 (Incentives) are "tied-together." However, the City's own draft Financial Analysis Report prepared by Strategic Economics concluded that based on current market conditions, the affordable housing requirements similar to those proposed under Bill 58, CD1 are infeasible for housing projects on Oahu, except for high-rise condominium projects with a "Community Benefits Bonus" in the Ala Moana area. (See, *Affordable Housing Requirement Financial Analysis Draft Report (April 2016)*).
5. **Instead of imposing IZ restrictions which have been proven not to work, and which have been evaluated as "infeasible," Bill 58, CD1 and this bill should confirm the City's commitment to provide land and infrastructure, and to allow for more flexibility and "incentives."** To increase the feasibility of, and to encourage the production of more affordable housing and housing for all income levels, Council should consider amendments which: (a) confirm that the City will provide the land and infrastructure for housing developments; and (b) include more flexibility to satisfy any IZ requirements and additional incentives, based on the input and recommendations of experienced housing developers and housing advocates.

Conclusion. Thus, based on the above, we respectfully urge the City Council to favorably consider the following LURF proposed amendments to Bill 59, CD1 (2017); and to convene a working group to work on and propose further amendments to Bills 58, CD1 and 59, CD1.

We appreciate the opportunity to provide comments on this matter. Should you have any questions, please feel free to contact us at (808) 521-4717 or via e-mail at darakawa@lurf.org.

Summary of LURF'S Proposed Amendments to Bill 59, CD1 (2017)

1. **AMEND: SECTION 1 Purpose and intent. Incentives should be applicable to ALL units, not merely to a percentage of affordable dwelling units.** It is well-known IZ principle and practice that the “market-priced” units “subsidize” the affordable units. Also, there is a need for housing at ALL income levels, and more affordable units become available through the operation of the “housing ladder” – when homeowners purchase market-priced units and sell their otherwise affordable-priced homes to others. Therefore, the incentives in Bill 59 should apply to all units, not restricted to only the “affordable dwelling units” or “*percentage of affordable dwelling units.*” LURF's proposed amendments are as follows:

This ordinance provides real property tax exemptions only for all residential and mixed use projects which include affordable rental dwelling units during the period in which the project is subject to an affordable housing agreement (Section 2), provides real property tax exemption during construction for all residential and mixed-use projects that [contain] include affordable dwelling units (Section 3), waives the wastewater system facility charges for all residential and mixed-use projects that include affordable dwelling units (Section 4), waives building permit and plan review fees for all residential and mixed-use projects that include affordable dwelling units (Section 5), and waives park dedication requirements for all residential and mixed-use projects that include affordable dwelling units (Section 6). The financial incentives will expire after 10 years, although the real property exemption provisions for affordable rental units will continue for the entire required period of affordability.

2. **ADD: Provisions to allow projects with existing housing agreements to voluntarily elect to the application of certain incentive provisions.** If the purpose of this bill is to create more affordable housing and housing for all income levels, this bill should be amended to allow projects on lands subject to existing Unilateral Agreements, development agreements and other previously recorded agreements to also voluntarily elect to the application of certain incentive provisions in Bill 59, CD1. Many of the already entitled housing projects on Oahu are already “vested” with their Land use Commission and City zoning approvals and unilateral agreements (most of the projects in Ewa, Ho’opili, Koa Ridge, etc.), such projects may also be competing with new projects under Bill 58, CD1 and Bill 59, CD1 and should also be able to take advantage of the flexibility of options, including, but not limited to: sliding scale of total units required, providing rental housing, off-site production, in-lieu fees, dedication of land, the incentives provided for in this measure, and further incentives proposed by LURF and other housing stakeholders.

3. **ADD: Identification and commitment of City lands to be used for affordable and market housing and other mixed uses and provide an expedited process for transfer and development.** In the 2017 State of the City speech, there was a commitment of several specific city-owned properties which are to be offered for development of housing. These properties should be listed in Bill 59, CD1, together with authorization for an expedited process to allow the lands to be developed for housing and other mixed-use purposes.
4. **ADD: Requirement that the City must ensure adequate off-site infrastructure without cost to the housing developer and unit purchasers.** The lack of City infrastructure has been one of the biggest limiting factors for the production of affordable housing. In 2013, a housing developer testified at the City Council that forcing the developer to provide the offsite infrastructure, can add costs of over \$100,000 per unit – which is passed on to the buyers of those units. After these projects are developed, the City be benefitting from more real property taxes, sewer and other fees, which would help to pay off infrastructure construction bonds and could help maintain the infrastructure. The City could also implement tax increment financing to pay for the infrastructure.
5. **ADD: Expedited process to up-zone areas with sufficient infrastructure and provide incentives for development of housing.** The City should provide an expedited process to up-zone areas with sufficient infrastructure (sewer, water, drainage, roads, parks, etc.) and provide the incentives listed below for the development of multiple housing units.
6. **ADD: Use of existing county, state and federal funding, grants and bonds, which are applied for, or administered by the City, to provide for project financing, assistance for new homeowner training, qualification, down-payment assistance and other services relating to affordable housing.**
7. **ADD: Establishment of a major dedicated county funding source for affordable housing.** Revolving funds should be funded by county appropriations, bonds, or a percentage of real property taxes; and perhaps even a percentage of the State general excise tax.
- **Application Fees, Infrastructure and/or Public Works Fees and Charges**
8. **AMEND: SECTION 2, Sec. 8-10(b) Exemption-Qualifying affordable rental dwelling units - The commercial and non-residential areas (lobbies, parking lots, walkways, elevators, stairwells, community meeting rooms, recreation or open space, etc.) should also be exempt from real property taxes.** The current

provisions limiting the real property tax exemption to only “*affordable rental dwelling units*” and areas for the “exclusive use” of affordable housing tenants is unfair, illogical and overly restrictive. Rental/commercial mixed-use projects and useful and pleasant non-residential areas that service a mixed use project should be one of the goals of the City’s affordable housing program and should be encouraged and incentivized, not punished. The commercial rental income and maintenance fees help to “subsidize” the costs of the affordable rentals and overall operation and maintenance of the mixed-use project. Moreover, the affordable housing tenants and their guests, as well as other tenants of the mixed uses could also enjoy the benefits of the non-residential areas. LURF’s proposed amendments are as follows:

(b) The provisions of this section shall only apply to the following:

- (1) Any mixed use or residential project with affordable rental dwelling units as defined and as provided on site or off site pursuant to Chapter (in reference to the affordable housing requirement introduced for adoption). The exemption provided in this section shall only apply to the affordable rental dwelling units themselves;
- (2) Any mixed use or residential project with affordable rental dwelling units provided pursuant to a planned development–transit permit, as set forth in Bill 74(2015), or an interim planned development–transit permit, as set forth in Section 21-9.100 and its subsections. The exemption provided in this section shall only apply to the affordable rental dwelling units themselves; or
- (3) Any mixed use or residential project with affordable rental dwelling units located on real property used in connection with a mixed-use or residential housing project developed in compliance with HRS Section 201H-36(a)(5). The exemption shall also apply to any portion of the property that is used for mixed use, residential, commercial, or other purposes and that is available for the non-exclusive use of the tenants of the affordable rental dwelling units.

9. **DELETE: SECTION 2, Sec. 8-10 (d) Exemption-Qualifying affordable rental dwelling units – Where a project is situated upon a single parcel of land, all portions of the property are eligible for the property tax exemption under this section. See paragraph 8, above. The income from the other portions of the property could help to**

subsidize the affordable rental units, and other non-residential areas could be used or enjoyed by the affordable housing tenants and their guests.

10. **AMEND: SECTION 4, Sec. 14-10 (a) Exemption and waiver of wastewater system facility charges for affordable dwelling units.** The waiver of wastewater system facility charges should be for the entire project, not limited to just the affordable dwelling units. LURF's proposed amendments are as follows:

"Sec. 14-10. Waiver of wastewater system facility charges for affordable dwelling units.

- (a) The wastewater system facility charges, as set forth in Appendix 14-D of this chapter, will be waived for the following:
- (1) Any mixed use or residential project with affordable dwelling units as defined and as provided on site or off site pursuant to Chapter _____ (in reference to the affordable housing requirement bill introduced for adoption);
- (2) Any mixed use or residential project with affordable dwelling units provided pursuant to a planned development-transit permit, as set forth in Bill 74 (2015), or an interim planned development-transit permit, as set forth in Section 21-9.100 and its subsections; or
- (3) Any mixed use or residential project with affordable rental dwelling units developed in compliance with HRS Section 201H-36(a)(5).

11. **AMEND: SECTION 5, Sec. 18-6.5 "Nickle and dime" Exemptions – Exemption and waiver of all fees relating to plan review and building permits of the entire project which includes affordable housing,** Sections 18-6.1 and 18-6.2 of the Revised Ordinances of Honolulu 1990 (ROH) (Ma'ili Self-Help III, Ohana Hale, Hale Kewalo, Holomua, Ola Ka 'Ilima Artspace Lofts, Halekauwila Place). The current proposed exemption provisions limiting the waiver plan review and building permit fees to only "*the residential portion of a project equal to: the percentage of affordable dwelling units,*" are unfair, illogical and overly restrictive, instead of being realistic, progressive and incentives-based. Planning and building plans for a successful project involves the project as a whole, and is not limited to only the affordable dwelling units. Rental/commercial mixed-use projects and useful and pleasant non-residential areas that service a mixed use project should be one of the goals of the City's affordable housing program and should be encouraged and incentivized, not punished. The commercial rental income and maintenance fees help to "subsidize" the costs of the affordable rentals and overall operation and maintenance of the mixed-use project. Moreover, the affordable housing tenants and their

guests, as well as other tenants of the mixed uses could also enjoy the benefits of the non-residential areas. LURF's proposed amendments are as follows:

(g) The building official shall waive the collection of the plan review and building permit fees for:

(1) Any mixed use or residential project which includes affordable dwelling units as defined and as provided within the project pursuant to Chapter _____ (in reference to the affordable housing requirement bill introduced for adoption); or

(2) Any mixed use or residential project which includes affordable dwelling units provided pursuant to a planned development-transit permit, as set forth in Bill 74 (15), or an interim planned development-transit permit, as set forth in Section 21-9.100 and its subsections.

12. **AMEND: SECTION 6, Sec. 22-7.3(j) Exemption from "Subdivision of Land - Scope" – Should apply to the entire project which includes affordable housing, not just to affordable dwelling units.** (Hale Kewalo, Artspace Lofts, Halekauwila Place, Ma'ili Self Help III) Subdivision plans involve the project as a whole, and are not limited to only the affordable dwelling units. Thus, the current proposed exemption provisions limiting the scope of subdivision requirements to only "*the affordable dwelling units,*" are unfair, illogical, overly restrictive and exhibit a "*nickel and dime*" mentality rather than a realistic, progressive, incentive-based approach. LURF's proposed amendments are as follows:

(j) This article shall not apply to any project which includes dwelling units constructed pursuant to the following:

(1) Any mixed use or residential project which includes affordable dwelling units as defined and as provided on site or off site pursuant to Chapter _____ (in reference to the affordable housing requirement bill introduced for adoption); or

(2) Any mixed use or residential project which includes affordable dwelling units provided as a community benefit pursuant to a planned development-transit permit, as set forth in Bill 74 (2015), or an interim planned development-transit permit, as set forth in Section 21-9.100 and its subsections.

(3) Any mixed use or residential project which includes affordable rental dwelling units provided in compliance with HRS Section 201H-36(a)(5)."

13. **ADD: Exemption and waiver of all fees relating to grading, grubbing and stockpiling permits**, ROH Section 14-14.4 (Hale Kewalo, Ohana Hale, Artspace Lofts, Halekauwila Place, Holomua)
14. **ADD: Exemption and waiver of all fees relating to trenching, repair and service permits**, ROH Section 14-17.1 (Artspace Lofts, Hale Kewalo)
15. **ADD: Exemption and waiver of all fees relating to private storm drain connection license fees**, from ROH Section 14-12.12 (Hale Kewalo, Ohana Hale, Artspace Lofts, Halekauwila Place)
16. **ADD: Deferral of payment of sewer lateral connection and installation charges**, under ROH Sections 14-1-3.2 (Ohana Hale)
- **Fire Department Fees**
 17. **ADD: Fire Department Plan Review Fees exemption** from ROH Section 20-1.1 (Hale Kewalo, Artspace Lofts)
- **Park Dedication Requirements and Fees**
 18. **RETAIN exemption from park dedication requirements to provide a park space, or payment of an in-lieu fees**, ROH Chapter 22, Article 7 (Ohana Hale, Ma'ili Self-Help III, Artspace Lofts, Holomua)
- **Board of Water Supply Rules and Regulations**
 19. **ADD: Deferral of payment of water system facility and installation of water service fees**, Sections 1-102, 2-202(2) and 2-202(3) of the Board of Water Supply Rules and Regulations (Holomua, Hale Kewalo: Ma'ili Self Help III, Halekauwila Place, Ohana Hale)
- **Land Use Ordinance - land uses and development standards**
 20. **Smaller Dwelling Lot Size - less than R-5 minimum lot area and lot dimensions**, LUO Section 21-3.170 and Table 21-3.2 (Ma'ili Self-Help III)
 21. **Subdivision or Consolidation of Land (smaller lot sizes)**, LUO Section 22-3.4, to allow dwelling lots less than the R-5 minimum lot area and lot dimensions (Ma'ili Self-Help III)

22. **No Connectivity of Streets**, LUO Section 22-3.5 and Sections 4-405 and 4-406 Subdivision Rules and Regulations, to not provide connectivity from the existing streets to the new interior roadway (Ma'ili Self-Help III)
23. **No Street Trees within the planter strip**, LUO Section 22-3.5 and Sections 5-512 and 5-513 Subdivision Rules and Regulations (Ma'ili Self-Help III)
24. **No Frontage Improvements along one side of road**, LUO Section 22-3.5 and Sections 5-501 and 5-502 Subdivision Rules and Regulations (Ma'ili Self-Help III)
25. **Subdivision Application Fees**, LUO Section 22-1.1 (Ma'ili Self-Help III)
26. **Height: exceed the current allowable maximum height**, LUO Section 21-3.120-2(b) and Table 21-3.4 (Ohana Hale, Holomua)
27. **Building Height Setback Envelope: encroach into the current allowable building height setback envelope**, LUO Section 21-3.120-2(5)(A) and Figure 21-3.7 (Ohana Hale)
28. **Density or Floor Area Ratio (FAR): exceed the current allowable density or FAR**, LUO Section 21-3.120-2(b) and Table 21-3.4, (Ohana Hale, Holomua)
29. **Rear Yard Setback: encroach into the current allowable 10-foot rear yard setback**, LUO Section 21-3.120-2(b) and Table 21-3.4 (Ohana Hale, Holomua)
30. **Side Yard Setback: encroach into the current allowable 10-foot side yard setback**, LUO Section 21-3.120-2(b) and Table 21-3.4 (Ohana Hale, Holomua)
31. **Street Setback: encroach into the current street setback**, LUO Section 21-3.120-2(c)(5)(A) (Holomua)
32. **Parking: allow fewer than the minimum number of required off-street parking spaces**, LUO Section 21-6.20 and Table 21-6.1 (Ohana Hale, Holomua)

- **Primary Urban Center Development Plan Policies and Guidelines - Exemptions**
 - 33. **Scenic Views** (PUC Section 3.1.1.2 – Scenic Views; Map A.1 – Significant Panoramic Views; Policy 3.1.2 - Policies; and Guideline 3.1.3.3 – Urban Skyline and Mauka-Makai Views) (Ohana Hale, Holomua)
 - 34. **Plazas** (PUC Policy 3.1.2 - Policies; and Guideline 3.1.3.7 – Other Urban Open Spaces) (Ohana Hale, Holomua)
 - 35. **Maximum Building Heights Exemption** (PUC Policy 3.2.2.3 – In-Town Residential Neighborhoods) (Ohana Hale, Holomua)
 - 36. **Additional Pedestrian Amenities Exemption** (PUC Policy 3.2.2.3 – In-Town Residential Neighborhoods) (Ohana Hale, Holomua)
- **New provisions for periodic review and assessment of Affordable Housing Incentives ordinance.**
 - New Provision: Require rules to establish goals, objectives, and performance criteria to assess the effectiveness of the Affordable Housing Incentives ordinance.
 - New Provision: Require Administration/Council to do a periodic review of the Affordable Housing Incentives ordinance; and review shall include, among other things, an assessment of the effectiveness of the Affordable Housing Incentives ordinance and new incentives which could be added.